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ITAA

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MAS Advisory Panel Presentation

Good morning. My name is Bruce Leinster and I am speaking today on behalf of the member companies of the Information Technology Association of America. ITAA is the premier IT and electronics industry association working to maintain America's role as the world's innovation headquarters. Following its April 1, 2008 merger with the Government Electronics and Information Technology Association (GEIA), ITAA is the largest industry association representing technology companies supporting the federal government. The Association provides leadership in public policy advocacy, market research, standards development and business development to some 350 corporate members offering Internet, software, services and hardware solutions to the public and commercial sector markets.

My comments today are intended to describe industry's expectations for the General Services Administration (GSA) IT schedule 70 program. Because the products and services that we offer to government agencies on our respective schedules are in fact commercial products and services, our hope and expectation is that our products would be sold through the schedule in as close to a commercial manner as possible. We believe that the IT schedule is conducive – perhaps more so than any other federal contract vehicle – to creating that commercial environment. Today, I will offer a few ideas which we believe will move us even closer to that ideal.

To be sure, we know that the federal acquisition process will never replicate the commercial marketplace. However, our expectation for the GSA schedule program is that it should provide an unencumbered process for procuring commercial products in a competitive setting and in a timely manner. Creating this environment would require use – to the fullest extent practicable – of commercial terms and conditions. Some characteristics of such a process are as follows:

1) Fast and easy to use, offering
- Streamlined processes with an emphasis on simplicity;
- Ordering guidelines for customers that are easy to understand and follow;
- Terms and conditions for contractors that are easy to understand and follow;
- And an automated system, managed by GSA, to support task order award and administration.

2) Low administrative costs for the government and contractors

3) Open solicitation with competition at the task-order level, administered by the agency

4) Wide acceptance by government agencies and contracting officers

5) Consistent interpretation of terms, conditions and guidelines by GSA across all regions

6) Specific requirements detailed at the task-order level

7) Task order requirements and sufficient specificity to determine contract type at the task-order level

8) Timely processing of modifications to keep the contract current and competitive

9) Use of blanket purchase agreements; and

10) Ability to provide integrated solutions through the use of contractor teaming arrangements

In the commercial marketplace, terms vary by vendor. Prices are set by volume, competition and negotiation, and are typically not subject to re-determination or adjustment. Business and pricing practices are not required to be disclosed or certified, except when necessary to address a particular issue of customer satisfaction. Tracking and reporting of sales activities are not required, and there is no limitation or restriction on the place of manufacture or the source of materials. While there may be exceptions in particular customer-negotiated settlements, any such pricing, tracking or sales reporting requirements are not subject to the type of penalties associated with federal acquisitions.

In the federal acquisition environment, the risk of failing to comply with the myriad government-unique requirements and terms and conditions – even when using the GSA IT schedules – poses a far more menacing prospect to commercial contractors than we face in the commercial marketplace. The False Claims Act, bid protests, the Buy American/Trade Agreement acts, the Truth in Negotiation Act, pre- and post-award audits and suspension and/or debarment are examples of government-unique requirements that drive up the costs for contractors. We don't face these requirements when selling in the commercial marketplace. So when suggestions are made that commercial customers impose similar data submission requirements on their suppliers as does the government, it must be understood that the risks associated with any such requirements are far greater in the federal environment. Indeed, the cost of compliance to commercial companies in federal acquisitions include 1) process tools and resources to track disclosures to maintain the ongoing accuracy and updates of those disclosures, 2) process tools and resources to track the source of materials, products and place of manufacture 3) audit staff to support pre- and post-award audits and 4) the maintenance of separate cost accounting structures. Further complicating the process with regard to GSA schedule transactions is the fact that there is no central government " buyer" that can aggregate sales, conduct negotiations and provide a single location for delivery and invoice processing – an arrangement typically encountered in the commercial marketplace.

Of course industry has chosen to participate in federal acquisitions, and we understand the barriers we face in so doing. However, the Congress has recognized its dependency on commercial products and services, and in an attempt to encourage non-traditional government contractors to offer their products and services to the government, it has alleviated many such barriers through legislative initiatives such as the Federal Acquisition Streamlining Act, the Clinger-Cohen Act and the Services Acquisition

Reform Act. Unfortunately, even as we speak, we face new, chilling obstacles. In the form of proposed or contemplated initiatives presenting issues such as changes to the definition of a commercial item, bid protests on multiple-award indefinite/delivery indefinite quantity contract task orders, contractor disclosure requirements, increased authority and autonomy of agency inspector generals as well as tampering with the manner in which time and material contract rates are established – something emphatically different than what we face when establishing such rates in the commercial marketplace.

Now let me draw the panel's attention to the issue of pricing, specifically with respect to provisions in the Clinger-Cohen Act and the Services Acquisition Reform Act (SARA). In the commercial market, prices are generally established between buyers and sellers based on such factors as committed volumes, competition, relationships, strategic sourcing and the business environment at the time of price establishment. Of course buyers and sellers do negotiate, and prices are established for individual transactions based on the factors mentioned above. However, sellers are free to set the initial or list price at whatever level best serves the seller's business objectives. There is no central facilitator setting sellers' list or catalogue price. In fact, often sellers don't even publish a list or catalogue price. This reality leads us to our recommendation to further enhance the utilization of the GSA IT schedule and to remove one of the most onerous encumbrances facing any schedule contractor – the manner in which prices are set and published in our GSA schedules.

During the first two sessions of the panel, there was prolonged discussion of the manner in which prices are set. We heard about the so-called most favored customer concept as well as the manner in which prices are subsequently adjusted, i.e. the price adjustment clause. One consistent theme in those deliberations was the incredible complexity associated with those processes. Data disclosure, pre- and post-award audits, certifications, etc., lend to these complexities and create a minefield of problems for participating contractors. Prior to Clinger-Cohen, the negotiated price had a great deal more significance than it does today. It was the price which governed every schedule order, because offering any agency a better price triggered a price reduction action of that schedule price. It was the major reason that the schedule was infrequently used, as agency contracting officers were criticized for buying at the government's list price. Instead, requirements were acquired using non-schedule open market solicitation processes that were far more costly to both the agency and the contractors.

With the advent of Clinger-Cohen, the ordering rules pertaining to the GSA IT schedule were revised. These new rules became responsible for the explosion in the use by agencies of the GSA IT schedule as well as the resultant order of magnitude increase in revenue derived from schedule transactions. More significantly, these changes have made the published GSA schedule price all but irrelevant. This is because real prices are established not at the award phase of the contract, but rather at the task-order level, where individual agency requirements are defined and fierce competition drives the actual task order prices. Before Clinger-Cohen, this phenomenon simply did not exist. This begs the question – why must we suffer through the excruciating negotiation/price reduction

process when such prices in fact govern very little of the revenue attributed to schedule transactions?

The GSA IT schedule program is the most commercial acquisition tool available to agencies and participating contractors. This is especially true since the advent of the Clinger-Cohen Act and it's appropriate, because the products and services we are offering are the same as those we sell to our commercial customers.

However, this tool can be significantly improved and made more commercial by addressing the issue of pricing. Consequently, ITAA would like to recommend that the panel seriously consider adapting two provisions. One contained in the Clinger-Cohen Act and originally offered as a pilot program and the other recommended by the Acquisition Advisory Panel created by section 1423 of the Services Acquisition Reform Act. The first provision dealt with the IT schedule establishment of product prices and it is set forth in Title LIV of the Clinger-Cohen Act. A copy is attached and provided for your information. The second provision addresses the pricing of hourly rates and is listed as recommendation number four in the Acquisition Advisory Panel's report to the Congress. It is also included in this submission for your information.

Both models are based on the reality that real prices are established through competition at the task-order level and both models propose the elimination of any negotiated, published schedule price. Rather, prices would be "set" by individual vendors and published on GSA Advantage – the electronic on-line tool to which both agencies and contractors have access. If we genuinely believe that competition is the most effective price driver – and the SARA panel certainly re-iterated that belief and found that competition was the preferred driver in the commercial market -- then we strongly believe that this is an idea whose time has come for implementation, and we urge your consideration. We recognize that this is well beyond what might have been contemplated by panel members at the outset of deliberations, but what better opportunity to act on a concept that would indeed be a tremendously refreshing step in the direction of creating a more unencumbered, commercial-like environment than the opportunity created by the establishment of this panel? Of course, not all transactions are achieved through competition. However, with the availability of prices from every vendor on GSA Advantage, together with what should be some awareness among agencies of what they and others have previously paid for the same items, agency contracting officers should be very informed negotiators when they are in the unlikely situation of bargaining absent the presence of competition.

Members of the panel, ITAA would enthusiastically make its members available to assist you in any further deliberations of this proposal. This concludes my remarks and I, together with my colleagues here present, would be happy to address any questions you may have. Thank you for this opportunity.